

1 John R. Benefiel (P 28970)  
2 280 Daines Street  
3 Suite 100 B  
4 Birmingham, Michigan 48009-6244  
5 810-644-1455

6 Janice P. Brown (114,433)  
7 SELTZER CAPLAN WILKINS & McMAHON  
8 2100 Symphony Towers  
9 750 B Street  
10 San Diego, California 92101  
11 619-685-3003  
12 Attorneys for Defendant

13 IN THE UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15 NEW AGE PRODUCTS, INC.,

16 Plaintiff,

17 v Civil Action No.  
18 PROGRESSIVE INTERNATIONAL CORPORATION,  
19 Defendant.

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21 AFFIDAVIT OF JOHN L. WITT

22 I, the undersigned do depose that:

23 CEO/Chairman

24 1. I am presently the ~~president~~ of Witt Plastics, Inc. of  
25 Greenville, Ohio, and have been ~~president~~ of Witt Plastics, Inc.  
26 since prior to 1991.

27 2. Attached are true copies of sales documents, kept in the  
28 ordinary course of business by Witt Plastics, Inc., numbered  
Exhibits 1-18. These documents reflect actual sales and shipping  
transactions made by Witt Plastics, Inc. on the dates indicated on  
the documents.

1       3. Attached as Exhibit 19 is a true copy of a specification  
2       sheet received prior to 1991 from Rexene Products Company, giving  
3       product data for its resin designated PP9231. Rexene PP9231 was  
4       used by Witt Plastics, Inc. to fabricate the extruded sheets for  
5       the sales to Schneider Plastics, Inc. corresponding to Exhibits 1-  
6       18 above.

7 Date: 5/27/97 8   
John L. Witt

12 STATE OF OHIO )  
13 COUNTY OF \_\_\_\_\_ )  
 )ss.

14 Subscribed and sworn before me, this 27 day of  
November, 1997.

17 (seal)

James W. Williams  
Notary Public

181 //

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20 | ////

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28 |

Greenville, OH 45338  
513/548-7272

FOR CURRENT INVENTORY REFER  
TO INVOICE NUMBER

PIEST  
WILCO

CUSTOMER'S DATE  
ORDER NO. 1936 ENTERED 10/31/91 APPROXIMATE SHIPPING DATE 12/06/91

SHIP  
Carrier  
INVOICE DATE 12/04/91

SHIPPED TO Schneider Plastics, Inc.

220 Bingham Dr. #105  
San Marcos, CA 92069

SHIP TO: Creative Plastics  
6365 Nancy Ridge Road  
San Diego, CA 92121

TERMS:

NET 30  
F.O.B. Greenville, Oh/Collect

GROSS  
WEIGHT 2,797  
ROUTED Churchill  
TRUCKING

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
APPROX.)	POLYPROPYLENE (9231) EXTRUDED SHEET CLEAR - SMOOTH FINISH			
2,500 lbr.	Extrusion Sheet Size: .010" x 36" x 47"	1.170/lb. (4520 shts) 2525#	\$ 2954.25	
				INVOICE TOTAL \$ 2954.25

**Witt Plastics**  
Manufacturing

Greenville, OH Phone: 513 / 548-7272  
Lakeland, FL Phone: 813 / 665-6550

FOR CORRESPONDENCE REFER  
TO INVOICE NUMBER

**No. 9478**

CUSTOMER'S  
ORDER NO.

19481

ENTERED 4/26/85

APPROXIMATE  
SHIPPING DATE

wk ending  
5/31/85

SHIP  
VIA

Common  
Carrier

INVOICE  
DATE

5/29/85

SHIPPED

ROUTED

GROSS  
WEIGHT

Dick Lavy Trk

11,094 Lbs.

SOLD TO:

Industry Products

500 Statler Rd

Piqua, OH 45356

Same as above

TERMS:

NET 30

F.O.B. Greenville, OH/Collect

QUANTITY  
ORDERED

DESCRIPTION

UNIT PRICE

QUANTITY  
SHIPPED

EXTENSION

BACKORDER

REF: Witt Invoice #9283 4/26/85  
POLYPROPYLENE (7129) EXTRUDED SHEET  
BLACK-SMOOTH FINISH

Total Lbs Shipped (1712 Shts - 9,988#)

10,000 lbs.

Sheet Size: .050" x 56" x 64"

\$0.96/lb.

4,994#

\$ 4,794.24

\$0.33/lb.

4,994#

\$ 1,648.02

\$0.05/lb.

4,994#

\$ 249.70

INVOICE TOTAL

♦ 6,691.96

THANK YOU

P.O. Box 808 • Greenville, Ohio 45331

Greenville, OH Phone: 513/548-7272

FOR CORRESPONDENCE REFER  
TO INVOICE NUMBER

Lakeland, FL Phone: 813/665-6550

No. 22308

CUSTOMER'S ORDER NO. 110638 DATE ENTERED 01/31/90 SHIPPING DATE 2/09/90 VIA

Common Carrier DATE 02/23/90

SOLD TO: Placon

P. O. Box 8246

Madison

MI 53708

SHIP TO:  
Placon  
6096 McKee Road

Madison

WI 53708

F.O.B. Greenville, OH/Collect

QUANTITY  
ORDERED

DESCRIPTION

UNIT PRICE

QUANTITY  
SHIPPED

EXTENSION

(approx.) POLYPROPYLENE EXTRUDED SHEET  
Rexene 9231) NATURAL (CLEAR) SMOOTH  
FINISH

7,500 lbs. Sheet Size: .020" x 16 11/16 Roll

0.980/1b. (48 rolls)  
8059#

\$ 7897.82

INVOICE TOTAL \$ 7897.82

ACCOUNTING

Plastic

CUSTOMER'S  
ORDER NO. 1936DATE APPROXIMATE  
ENTERED 10/31/91 SHIPPING DATE / /SHIP  
VIAINVOICE  
DATE 11/11/91  
DATE  
SHIPPED / /  
ROUTEDSOLD TO: Schneider Plastics, Inc.  
220 Bingham Dr. #105  
San Marcos, CA 92069  
SHIP TO:

TERMS:	NET 30	F.O.B.		
QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
3,500 lbs.	CLEAR POLYPROPYLENE 9231 RESIN (PURCHASED FOR SCHNEIDER PLASTICS PO #1936)	0.750/lb	3500#	\$ 2625.00
		INVOICE TOTAL	\$ 2625.00	

FILE COPY





Greenville, OH Phone: 745-5131/548-7272

FOR CORRESPONDENCE REFER  
TO INVOICE NUMBER

CUSTOMER'S NAME DATE APPROXIMATE SHIPPING DATE

ORDER NO. Verbal ENTERED 08/28/92 09/18/92 VIA Common

Carrier DATE 09/21/92  
A. Lakeland, FL Phone: 813/665-6550

No. 029439

SOLD TO: Schneider Plastics, Inc.

220 Bingham Dr. #105  
San Marcos, CA 92069INVOICE DATE 09/21/92  
DATE SHIPPED 09/21/92  
ROUTED Consolidated  
Freight

SHIP TO: Creative Plastics

6365 Nancy Ridge Road  
San Diego, CA 92121

GROSS WEIGHT 2,715#

TERMS: NET 30

F.O.B. Greenville, OH/Collect

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
(APPROX.)	POLYPROPYLENE EXTRUDED SHEET CLEAR - SMOOTH FINISH			
2500 lbs.	Sheet size: .010" x 36" x 47"	2.260/lb. (4521 shts)	\$ 2541.66	\$ 5742.66

INVOICE TOTAL \$ 5742.66

FILE COPY







## NON-CONFORMANCE REPORT

## CORRECTIVE ACTION TAKEN:

## PREVENTIVE ACTION

10/17/92 NC RPT# 10371. No. 188 Cust. Name Schneider Plasticson Contacted Bob Thompson P.O. # VERBAN1. Type 1 Surface Sm Color Clr Job# 210141. 010 x 436 x 47 L1. No. 1394-1396 Compl. only Ret. Cds. X1. Entity Involved 1000# On-site visit requested       1. Customers description of non-conformance: scratches, Die lines, Edge points1. samples being sent? X Yes        No1. Is product need to be replaced? X Yes        No1. S. date given for arrival of replacement 10/27/921. Assignment for pick-up of return: 10/27/92 for TBA1. Dept/Mach        Cause        Control Center       1. Code: 540 Code:        Code:       1. General cause code # assigned       1. Complaint allowed        Yes        No (If no submit to M.R.B.)1. Credit given        Yes        No1. Sales Price \$ 2.26 /LB. Total Cr. \$        Mail Cost \$       1. Labor Cost \$        Est. Indirect cost \$       1. Total Cost \$        Cost charged to dept. no.       1. Product disposition:        Grind        Dump1. Date of disposition:       1. Name Mike ennen Shift 1ST1. Shift Inspector Sue/Bob1. Date Issued:       1. Date of disposition:       1. Date completed       1. Date completed       1. Date completed       1. Date completed

TIV513/548-7272

No.029693

CUSTOMER'S VERBAL DATE 10/13/92 APPROXIMATE 10/27/92 SHIP Common  
ORDER NO. 20000000000000000000 ENTERED DURING A ROT 2030 SHIPPING DATE 10/20/92

RECEIVED IN STOCK AND SHIPPED ON 10/20/92 BY 2030  
RECEIVED ON 10/20/92 BY 2030  
SHIPPED ON 10/20/92 BY 2030

SOLD TO: Schneider Plastics, Inc.  
220 Bingham Dr. #105

SALESD MAXCOPA JACKETED 100% POLYPROPYLENE CLEAR  
100% POLYPROPYLENE CLEAR 100% POLYPROPYLENE CLEAR

SHIP TO: Creative Plastics  
6365 Nancy Ridge Road  
San Diego, CA 92121

TERMS: NET 30

TERMS: F.O.B. Greenville, OH/PREPAID

Exhibit 8  
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QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
(APPROX.)	<b>POLYPROPYLENE EXTRUDED SHEET CLEAR ~ SMOOTH FINISH</b>	<b>2.260/lb.</b>	<b>(4525 shts)</b>	<b>\$ 5896.34</b>
<b>2500 LBS.</b>	<b>sheet size: .010" x 36" x 47"</b>			

FILE COPY

From WITT PLASTICS, INC.

At Greenville, Ohio 45331

By WATKINS MOTOR

Consigned to **CREATIVE PLASTICS**, 6365 Nancy Ridge Rd. (Mail or street address of consignee—For purposes of notification only) **NYC/NJ 3100**

Destination San Diego, CA 92121

Route \_\_\_\_\_ PLEASE SEE BILLING INSTRUCTIONS BELOW

**Delivering Carrier** \_\_\_\_\_ **Name** \_\_\_\_\_

Size, Or In Length Of Not Less Than 100 Feet In Rolls Not Less Than 3 Inches In Diameter. (Per NMFO 100A Item 1)	CLSS	2,500	1,000

Access, SUB 1 - 15 "PCF OR GREATER

For NMIC 100A Item 1b&2b); LTL 18600 (Specify Density)

Plastic Flakes, NOT Granules, Jumbo Pellets, Powder Or Solid Mass In Barrels, Boxes, Or Pails. In Wall Wall Pack.

Part, Up to Package. (Per NMF 100A, Item 18220)

PLEASE SEND FRT. BILL TO:  
CITY OF BIRMINGHAM

220 BINGHAM STREET  
SOMERVILLE PLASTICS, INC.  
Agents of Cudahy.

**SAÑ MARCOS, CA 92069**

where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

RECEIVED IN CORRECTLY DESCRIBED  
C. O. D. AMT. Collection Fee

111 PLASTICS, INC.  
Artindale Rd, P.O. Box 808, Greenville, Ohio 45331

manent post office address of shipper

65



Greenville, OH Phone:

FOR CORRESPONDENCE REFER  
TO INVOICE NUMBER

DATE 11/14/93 APPROXIMATE SHIP DATE 12/18/92

A. Lakeland FL Phone:

No. 030282

813 / 665-6550

CUSTOMER'S NAME DATE APPROXIMATE SHIP DATE  
ORDER NO. Verbal ENTERED 12/02/92 SHIPPING DATE 12/18/92 VIA Watkins INVOICEBOLD TO: *John Schneider* **SCHNEIDER PLASTICS, INC.**  
220 Bingham Dr. #108, **936 Nancy Ridge Road**, San Diego, CA 92121  
TERMS: **NET 30**ROUTED WATKINS  
F.O.B. **Greenville** **SHIPPED**  
**Freight** DATE **12/21/92**  
**GROSS**  
**WEIGHT** **5,437#**SHIP TO: **San Marcos**, CA 92070  
2000 FT. OF POLYPROPYLENE SHEET

DATE

SHIPPED

12/21/92

ROUTED WATKINS

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
10000	<b>POLYPROPYLENE EXTRUDED SHEET</b> <b>CLEAR</b> <b>SMOOTH FINISH</b>	<b>1.600/LB.</b> <b>(6000 SHEETS)</b>	<b>6095#</b>	<b>\$ 8152.00</b>
1000	<b>LBS.</b> <b>SHEET SIZE.</b> <b>.015" X 36" X 47"</b>			

**INVOICE TOTAL****\$ 8152.00**

*John Schneider*  
3153 N. Nancy Ridge Rd.  
San Marcos, CA 92070

FILE COPY





STOMER: 7  
DRESS: 235 Brighton Dr

DATE: 10/11/73

San Marcos, CA 92069

PHONE NO.: 619-752-7240  
PERSON  
CONTACTED: Rod Thompson

MATERIAL: Polypropylene (9331)

ADDITIVES: \_\_\_\_\_

COLOR: Clear

SURFACE: Smooth

SHEET/ROLL SIZES:

.015" x 36" x 47"

TOLERANCES:

GAUGE	+	-
WIDTH	+	-
LENGTH	+	-
SQUARE	+	-

COMMENTS: Die Cut Applications

QUANTITIES/PRICE COMPUTATIONS:

m#1/1000/5020 1".75/350\*104.40 = \$1.60/#

m#1/1000/5020 1".65/350\*104.40 = \$1.44/#

m#1/1000/5020 1".62/350\*1104.40 = \$1.32/#

m#1/1000/5020 1".62/350\*104.40 = \$1.27/#

m#1/1000/5020 1.59/350\*104.40 = \$1.22/#

ESPECIAL REQUIREMENTS/REMARKS: FOR Greenville, OH

FILE REQUESTED: \_\_\_\_\_

MATERIAL: \_\_\_\_\_ COLOR: \_\_\_\_\_

HEET SIZE: \_\_\_\_\_

RFACE: \_\_\_\_\_ SHEETS/ROLLS: \_\_\_\_\_ LBS: \_\_\_\_\_

**REXENE® RESINS****POLYPROPYLENE**PRODUCT DATATYPE: PP 9231DESCRIPTION: Clarity, toughness, chemical, solvent, stress crack resistance; (FDA\*)APPLICATIONS: Sheet extrusion for food, health and beauty aid products; general purpose extrusion and thermoforming where good clarity is desired.

<u>TYPICAL PROPERTIES</u>	<u>ASTM TEST METHOD</u>	<u>VALUE</u>	<u>UNIT</u>
MELT FLOW RATE	D 1238	1.0	DG/MIN
DENSITY	D 1505	.900	GM/CM <sup>3</sup>
TENSILE	D 638		
YIELD STRENGTH		3,900	PSI
ULTIMATE ELONGATION		>300	%
MODULUS		150,000	PSI
FLEXURAL MODULUS	D 790	145,000	PSI
DEFLECTION TEMP. @ 66 PSI	D 648	91	°C
ROCKWELL HARDNESS "R"	D 785	80	
NOTCHED IZOD	D 256	1.8	FT-LB/IN

\* Conforms to FDA regulation 21 CFR 177.1520

4/88

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**REXENE**  
*Specialists in specialty resins*

5005 LBJ FREEWAY • OCCIDENTAL TOWER • DALLAS, TX

CENTRAL REGION  
1515 Westfield Road, 75250NORTHERN REGION  
322 Route 45 West, Suite 230  
P.O. Box 364, 1707SOUTHERN REGION  
2849 Pease Ferry Rd  
Winston, GA 31293  
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